

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:06-HC-2205-BR

UNITED STATES OF AMERICA
v.
THOMAS MATHERLY

MOTION TO DISSOLVE NOVEMBER 26,
2007 ORDER STAYING RESPONDENT'S
RELEASE

THOMAS MATHERLY, the respondent in the above-captioned case, by and through undersigned counsel, moves this Honorable Court for an order dissolving this Court's November 26, 2007 Order staying his release pending appeal. On January 8, 2009, the Fourth Circuit Court of Appeals upheld this Court's November 7, 2007 Order holding 18 U.S.C. § 4248 unconstitutional. *See United States v. Comstock*, Slip Op. No. 07-7671 (4th Cir., January 8, 2009). This Fourth Circuit opinion undermines the government's primary justification for the November 26 stay and affirms that the Bureau of Prisons is holding respondent unconstitutionally.

Respondent respectfully requests that this Court dissolve its November 26, 2007 Order and order that respondent be immediately released. Undersigned counsel has contacted counsel for the government who opposes the relief sought in this motion.

Respectfully requested this 9th day of January, 2009.

THOMAS P. McNAMARA
Federal Public Defender

/s/ Jane E. Pearce
JANE E. PEARCE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

MICHAEL D. BREDENBERG
Special Assistant United States Attorney
Federal Medical Center
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Butner, NC 27509
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by electronically filing the foregoing with the Clerk of Court on January 9, 2009, using the CM/ECF system which will send notification of such filing to the above.

This the 9th day of January, 2009.

/s/ Jane E. Pearce
JANE E. PEARCE
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